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6

7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9

10 SECURITIES AND EXCHANGE  
COMMISSION,

11 Plaintiff,

12 v.

13 JOHN V. BIVONA; SADDLE RIVER  
14 ADVISERS, LLC; SRA  
MANAGEMENT ASSOCIATES, LLC;  
15 FRANK GREGORY MAZZOLA

16 Defendants, and

17 SRA I LLC; SRA II LLC; SRA III  
18 LLC; FELIX INVESTMENTS,  
LLC; MICHELE J. MAZZOLA;  
19 ANNE BIVONA; CLEAR  
20 SAILING GROUP IV LLC;  
CLEAR SAILING GROUP V LLC,

21 Relief Defendants.  
22

Case No. 3:16-cv-1386

**NOTICE OF LODGING OF  
RECEIVER'S CLAIMS  
PROCESS PROGRESS  
REPORT**

Date: April 5, 2018

Time: 1:30 PM

Courtroom:

Judge: Edward M. Chen

23  
24 On February 8, 2018, the Court instructed Sherwood Partners, Inc., the  
25 Receiver in this matter, to file a report with the Court concerning the progress  
26 of the claims process. The Court was interested in being informed (i) as to  
27 "how many valid investment and creditor claims exist"; and (ii) "whether any  
28 shortfall exists with respect to those claims." Appended hereto as Attachment

1 A is the Receiver's Preliminary Report on the current status of the claims  
2 process.

3 The Receiver wishes to note, to the Court and all interested parties, that  
4 the Preliminary Report, which gives a current picture of the status of the claims  
5 process, is a work in progress requiring further review and analysis to ensure  
6 reasonable reliability. Among other, as yet uncompleted tasks, the Receiver  
7 needs to (a) re-canvas investors whose claim forms while submitted, were  
8 incomplete; (b) make preliminary decisions on whether and to what extent  
9 subordinated claims should be rejected; and (c) seek the Court's guidance on  
10 how to treat the Square shareholders whose shares, while in the Receivership  
11 Estate were never distributed but the proceeds from which were utilized in the  
12 administration of the Estate.

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March 21, 2018

*/s/ John W. Cotton*  
John W. Cotton  
Counsel to Receiver, Sherwood Partners,  
Inc.

# Attachment A

**Securities and Exchange Commission v. John V. Bivona, et al., Civil Action No. 3:16-cv-01386  
Receiver's First Preliminary Claims Report, March 21, 2018**

The Receiver in the above matter, Sherwood Partners, Inc., (the "Receiver"), hereby provides its first Claims Report (the "Report") to the Court outlining preliminary claims process results. The results reflected in this Report represent work in progress and are subject to changes and revisions. Pursuant to the Court's Minute Order of November 16, 2017 (please refer to Court Document No. 275), the Receiver initiated a claims process (the "Process") in the Fourth Quarter of 2017, which has continued into the First Quarter of 2018. In order to manage the Process efficiently and as cost-effectively as possible, the Court approved the Receiver's retention of JND Corporate Restructuring ("JND"), an experienced claims agent.

At the Status Hearing held on February 8, 2018, the Court issued a Minute Order, (please refer to Court Document No. 309) instructing the Receiver to determine the number and amount of valid claims that were submitted to JND and whether there are shortfalls<sup>1</sup> resulting from the submitted claims. The Receiver was instructed:

*"...[to] file its report about the claims process with the Court upon completing the validation process, and the report shall include all information necessary for the Court to understand how many valid investment and creditor claims exist and whether any shortfall exists with respect to those claims."*

This Report is divided into five sections representing the claims review procedures implemented, the current status of the claims review and the next action steps recommended by the Receiver in order to complete the Process.

The first section addresses the validation procedures that the Receiver has implemented, procedures approved by both the Securities and Exchange Commission ("SEC") and the Investors' Group ("IG"). The second section outlines the preliminary Process' results on a global level. The third section of the Report addresses the preliminary results for the investor claims in more detail, in order to provide the Court with more clarity at an investment level. The fourth section of this Report addresses the claims and results for the non-investors. The fifth and last section outlines the next steps that the Receiver proposes to take to finalize the review and validation of the proofs of claim ("POC") received.

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<sup>1</sup> The Report refers to shortfalls in monetary terms

## I. Validation Procedures

In order to proceed with the initial validation of the POCs, the Receiver prepared a memorandum to instruct JND on the elements of a valid claim (please refer to Exhibit A attached to this Report). Pursuant to the parameters outlined in the memorandum, JND conducted a review of all the POCs received. JND has conducted a review of each POC filed to determine its validity, resulting in a Valid Claims process<sup>2</sup>. The results to date are considered preliminary and unfinalized, since the claims are only 41% validated. The results are not sufficiently complete to be deemed reliable. Therefore, the resulting Report and the preliminary results are inconclusive and subject to further revision. As of this date, the Receiver is still expecting potential claims to be submitted and there remain almost 600 claims yet to be validated.

## II. Preliminary Summary Process Results

As of the date of this Report, the majority of the POCs submitted are accounted for. There are exceptions that have been allowed by the Court and the Receiver to permit the submission of POCs beyond the claims bar date of January 31, 2018. For instance, former employees, contractors and brokers are still in the process of submitting POCs.

The Receiver and JND have separated the POCs received in two categories:

- A. POCs filed by Investors
- B. POCs filed by Non-Investors

The Receiver is utilizing two different measures to determine whether preliminary shortfalls exist: a monetary measure and a share count measure. The monetary measure focuses on the claims for purchased value (i.e. number of shares times price per share at the time of investment, or “purchased value”). The share count measure focuses on the number of shares of intended investments. This initial Report focuses on the monetary shortfall. The Receiver intends to provide additional detail with a focus on potential shares shortfalls or surpluses in subsequent Reports.

A monetary shortfall results when there is an excess of claims for purchased value compared to what the Receiver is aware of. Similarly, a share count shortfall results when more claims are filed for a specific number of shares of intended investments than the currently known quantity of shares of those investments held by the Receivership Estate.

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<sup>2</sup> A Valid Claim is (1) any claim for which there is no duplicate, (2) any claim that conforms to the memorandum prepared by the Receiver and (3) any investor claim in a pre-IPO investment that has not become valueless before the beginning of the Receivership on October 11, 2016. In the Amended Joint Plan of Distribution, valueless claims are included and the Receiver can amend the Report if the Court adopts the Joint Plan of Distribution.

The preliminary results of the Process for claims filed by **investors** are as follows:

- Total number of POCs received is 923
- Total amount claimed by the investors is \$74,937,303
- Total number of shares across various investments claimed is 13,278,693

The preliminary results of the Process for claims filed by **non-investors** are as follows:

- Total number of POCs received is 7
- Total amount claimed by non-investors is \$66,098,763

Therefore, the preliminary total amount claimed by investors and non-investors is \$141,036,066.

The Receiver mailed out pre-populated POCs expecting a potential amount claimed by investors and non-investors totaling \$76,847,464.

Given the above metrics, there appears to be a preliminary monetary shortfall of \$64,188,602. This represents the difference between \$141,036,066 and \$76,847,464.

**Table 1: Preliminary Summary of Global Metrics**

<b>Description</b>	<b>Totals (Validated and Non-Validated)</b>	<b>Validated to Date</b>	<b>Non-Validated</b>	<b>% Validated</b>
Number of Investor POCs received	923	374	549	41%
Number of Non-Investor POCs received	7	0	7	0%
<b>Total amount claimed by Investor claimants (\$)</b>	<b>\$74,937,303</b>	\$27,356,851	\$47,580,452	37%
<b>Total number of shares claimed by investor claimants</b>	<b>13,278,693</b>	4,144,294	9,134,399	31%
<b>Total amount claimed by Non-Investor claimants (\$)</b>	<b>\$66,098,763</b>	\$0	\$66,098,763	0%

<b>Total Combined number of POCs received (Investors and Non-Investors)</b>	<b>930</b>
<b>Total Combined amount claimed by investors and Non-Investors</b>	<b>\$141,036,066</b>

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### III. Preliminary Investor Claim Results by Individual Investment

Utilizing the same measures, JND has analyzed the investors' POCs by discrete investment. The review has resulted in preliminary shortfalls/surpluses that vary by investment.

As of the date of this Report, the preliminary results of the investors' claims indicate that there are initial/potential monetary shortfalls for the following investments:

1. Addepar, Inc. ("Addepar")
2. Binary Venture Partners ("Binary Venture")
3. Facebook, Inc. ("Facebook")
4. Groupon, Inc. ("Groupon")
5. Jump Tap, Inc. ("Jump Tap")
6. Kumbuya, Inc. ("Kumbuya")
7. Palantir, Inc. ("Palantir")
8. Snapchat, Inc. ("Snapchat")
9. Twitter, Inc. ("Twitter")

These preliminary shortfalls for the above investments have been calculated by comparing the difference between the amounts reflected on the pre-populated POC forms that the Receiver mailed out and the amounts reflected on the POC forms returned to the Receiver. Please refer to Table 2 below for additional detail.

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Table 2: Metrics by Individual Investment (\$)

Key Metrics by Individual Investment					
Name of Investment	Total \$ Amount per Pre-Populated POCs sent by Receiver	Total \$ Amount per POCs Submitted by Claimants	Variance: Surplus/(Shortfall)	\$ Amount of POCs VALIDATED to Date	\$ Amount of UNVALIDATED POCs
ADDEPAR	\$ 698,108.36	\$ 742,442.56	\$ (44,334.20)	\$ 388,438.20	\$ 354,004.36
AIRBNB	\$ 834,350.92	\$ 834,350.92	\$ -	\$ 554,500.92	\$ 279,850.00
ALIPHCOM	\$ 2,089,051.14	\$ 1,816,451.14	\$ 272,600.00	\$ -	\$ 1,816,451.14
BADGEVILLE	\$ 2,367,721.48	\$ 1,853,271.48	\$ 514,450.00	\$ -	\$ 1,853,271.48
BIG TEN	\$ 1,619,866.79	\$ 1,331,500.00	\$ 288,366.79	\$ 652,600.00	\$ 678,900.00
BINARY VENTURE PARTNERS	\$ -	\$ 350,000.00	\$ (350,000.00)	\$ -	\$ 350,000.00
BLOOM ENERGY	\$ 2,704,461.58	\$ 2,682,099.87	\$ 22,361.71	\$ 877,462.83	\$ 1,804,637.04
CANDI CONTROLS	\$ 2,308,984.00	\$ 2,106,984.00	\$ 202,000.00	\$ 445,000.00	\$ 1,661,984.00
CHECK	\$ -	\$ -	\$ -	\$ -	\$ -
CLOUDERA	\$ 623,460.36	\$ 623,460.36	\$ 0.00	\$ 68,000.00	\$ 555,460.36
DROPBOX	\$ 905,140.00	\$ 405,060.00	\$ 500,080.00	\$ 171,560.00	\$ 233,500.00
EVERNOTE	\$ 1,155,844.38	\$ 1,155,844.38	\$ (0.00)	\$ 533,500.00	\$ 622,344.38
FACEBOOK	\$ -	\$ 103,000.00	\$ (103,000.00)	\$ -	\$ 103,000.00
GLAM MEDIA	\$ 254,800.00	\$ 205,800.00	\$ 49,000.00	\$ -	\$ 205,800.00
GROUPON	\$ -	\$ 250,000.00	\$ (250,000.00)	\$ -	\$ 250,000.00
JUMIO	\$ 5,330,175.05	\$ 4,459,804.79	\$ 870,370.26	\$ -	\$ 4,459,804.79
JUMP TAP	\$ -	\$ 27,600.00	\$ (27,600.00)	\$ -	\$ 27,600.00
KUMBUYA	\$ -	\$ 125,120.00	\$ (125,120.00)	\$ -	\$ 125,120.00
LOOKOUT	\$ 1,920,440.76	\$ 1,745,244.56	\$ 175,196.20	\$ 1,054,400.56	\$ 690,844.00
LYFT	\$ 246,454.06	\$ 246,454.07	\$ (0.01)	\$ 117,654.01	\$ 128,800.06
MONGO DB	\$ 946,592.31	\$ 933,092.31	\$ 13,500.00	\$ 607,092.35	\$ 325,999.96
ODESK	\$ 145,000.00	\$ 99,000.00	\$ 46,000.00	\$ -	\$ 99,000.00
PALANTIR	\$ 29,556,339.96	\$ 32,608,553.30	\$ (3,052,213.34)	\$ 14,614,493.61	\$ 17,994,059.69
PALANTIR (DEBT INST.)	\$ 540,000.00	\$ 500,000.00	\$ 40,000.00	\$ 375,000.00	\$ 125,000.00
PINTEREST	\$ 547,900.41	\$ 547,900.41	\$ 0.00	\$ 281,200.00	\$ 266,700.41
PRACTICE FUSION	\$ 3,996,197.39	\$ 3,639,987.50	\$ 356,209.89	\$ 1,623,511.72	\$ 2,016,475.78
SERIES X	\$ 6,793,000.00	\$ 6,223,000.00	\$ 570,000.00	\$ 2,000,000.00	\$ 4,223,000.00
SNAPCHAT	\$ 345,500.00	\$ 545,525.01	\$ (200,025.01)	\$ 35,000.00	\$ 510,525.01
SOLIS	\$ 5,016,911.67	\$ 3,836,293.71	\$ 1,180,617.96	\$ 821,250.00	\$ 3,015,043.71
SQUARE	\$ 5,580,923.12	\$ 4,164,463.03	\$ 1,416,460.09	\$ 2,136,186.95	\$ 2,028,276.08
TWITTER	\$ -	\$ 25,000.00	\$ (25,000.00)	\$ -	\$ 25,000.00
UBER	\$ 19,000.00	\$ 19,000.00	\$ 0.00	\$ -	\$ 19,000.00
UNKNOWN	\$ -	\$ 610,000.00	\$ (610,000.00)	\$ -	\$ 610,000.00
VIRTUAL INSTRUMENTS	\$ 23,000.00	\$ 23,000.00	\$ -	\$ -	\$ 23,000.00
ZOCDOC	\$ 278,240.20	\$ 58,000.00	\$ 180,240.20	\$ -	\$ 98,000.00
<b>TOTALS</b>	<b>\$ 76,847,463.96</b>	<b>\$ 74,937,303.40</b>	<b>\$ 1,910,160.56</b>	<b>\$ 27,356,851.15</b>	<b>\$ 47,580,452.25</b>

**Note:** The "Variance" represents the difference between the amount reflected on the pre-populated POC forms mailed out by the Receiver and the POC forms filed by claimants, returned to the Receiver

#### IV. Preliminary Non-Investor Claim Results

JND has received seven non-investor POCs to date, totaling \$66,098,763. The seven POCs can be classified into the following categories:

1. Private Judgment Creditor Claims
2. Governmental Judgment Creditor Claims
3. Insider Claims
4. Non-Judgment Creditor Claims

These four categories of non-investor claims have yet to be validated and all are under review by the Receiver and JND.

### **1. Private Judgment Creditor Claims**

Three separate claims have been received from non-investors whose claims have been reduced to some form of Court-sponsored judgment. These claims total \$11,677,240, as reflected below:

- 1.1 Progresso Ventures, LLC (“Progresso”) in the amount of \$5,529,364**
- 1.2 Global Generation Group, LLC (“Global Generation”) in the amount of \$2,236,376**
- 1.3 Pradeep Sindhu (“Sindhu”) in the amount of \$3,911,499**

The Progresso and Global Generation claims resulted from loan/purchase transactions in which Receivership Entities were to use the loan proceeds to purchase pre-IPO companies shares. In the case of Progresso, those pre-IPO shares were supposed to be Facebook shares and in Global Generation’s case, those pre-IPO shares were supposed to be Facebook, Palantir and Groupon shares.

Sindhu’s claim allegedly resulted from loans to a non-Receivership entity, FB Management Associates, LLC (“FB Management”). It seems that FB Management settled the claims by pledging its assets, and thereafter converted the pledges to recorded confessions of judgment for itself, as well for those of three affiliated Receivership entities, (FMOF Management Associates, LLC, NYPA Management Associates, LLC, and SRA Associates, LLC) which received no direct benefit from the loans, and for that reason may be challenged by the Receiver for, among other things, constituting fraudulent conveyances.

### **2. Governmental Judgment Creditor Claims**

The SEC is asserting a claim for \$53,377,958 against the Receivership Entities, based upon allegations in the Complaint. A second, duplicate claim was submitted by the SEC, because the delivery service was unable to confirm delivery of the first claim to the claims agent, JND. The SEC will modify its claim if and when the Court enters the Stipulated Final Judgment that the SEC previously submitted to the Court against the Receivership Entities.

### **3. Insider Claims**

Thus far only one claim has been lodged by a former employee of the Receivership entities, for unpaid commissions pledged and promised by the former management, in the amount of \$338,817.

### **4. Non-Judgment Creditor Claims**

Two investors, Kevin Smith (the “Smith Claim”) and Patrick O’Leary (the “O’Leary Claim”), have lodged claims, totaling \$704,748.

### **The Smith Claim**

This claim is based on a pending Court action filed in New York State Court on March 2, 2017, against one Receivership entity, SRA Management, LLC, among others Defendants, including Defendant John Bivona. The claim is for \$484,374 and is based on a purported \$50,000 investment in Facebook for which Mr. Smith alleges he never received his shares. The claim amount is based on the current share price of Facebook, for the shares that the Smith Claim alleges were never delivered to him.

### **The O’Leary Claim**

This claim is filed for Patrick O’Leary’s investment in Practice Fusion, Inc. (“Practice Fusion”), a pre-IPO company that now appears valueless. The claim for \$220,374 is based on an alleged side oral “guaranty” for the return of the principal by one of the Defendants.

## **V. Receiver’s next steps in the claims review and validation process**

With the initial review and first step of the Process completed, 374 investors’ POCs have been validated, representing 41% of the total investors’ POCs received. Close to 600 POCs remain unvalidated as of the date of this Report.

With this Court’s approval, the Receiver plans to direct JND to follow up with the claimants that submitted incomplete claims, which could not be validated during the first validation step. In this regard, the Receiver has prepared a follow-up letter with clear instructions to be sent to the claimants requesting additional information or supporting materials, that would allow the Receiver and JND to validate their claims. The Receiver recommends providing an additional 30 days from the date of mailing, for claimants to respond.

Claimants, whose claims are invalid per the February 8, 2018 Minute Order (please refer to Court Document No. 309) will be informed that their claims have been rejected and the basis of the rejection.

This includes the claimants who invested in the following investments and which failed prior to the October 11, 2016 appointment of the Receiver (please refer to footnote #2 on page 2 of this Report):

- Glam Media, Inc. (“Glam Media”)
- Jawbone, Inc. (“Jawbone”)
- Jumio, Inc. (“Jumio”)
- Badgeville, Inc. (“Badgeville”)
- Virtual Instruments, Inc. (“Virtual Instruments”)
- ODesk, Inc. (“ODesk”)

**Glossary of Terms:**

**“Investor Claim”** - a claimant who submitted a claim to JND that attested to the pre-populated claims form or can provide proof they are due shares of investments from the Receivership Estate

**“Claimant”** - any investor or non-investor who submitted a POC

**“Known Investors”** - the names and addresses of investors located during the Receiver’s work as Monitor and were provided by the former management or their employees

**“Known Quantity”**- the number of shares that were pledged to Investors which were provided to the Receiver during its work as Monitor by the former management or their employees

**“Non-Investors”** - anyone who has provided a POC that is not an Investor POC

**“Purchased Value”**- the amount of money an Investor Claimant initially submitted to the Defendant Entities

**“Receivership Estate”**- the Receivership Estates of Saddle River Advisors, LLC’s holding companies, SRA I, LLC, SRA II, LLC, SRA III, LLC, (the “SRA Funds”) and Clear Sailing Group IV, LLC and Clear Sailing Group V, LLC (the “Clear Sailing Funds”), which are, collectively, the “Receivership Defendants.” The stipulating affiliated entities agreed, as well to their administration by the Receiver

**“Receivership Claim”**- any legal claim the Corporate Defendants or Relief Defendant Entities or affiliated third party entities have against third parties

**“Valid Claim”** - POC that has been validated per the criteria outlined in the Claims Memorandum (Exhibit A)

# **EXHIBIT A**

## MEMORANDUM

TO: SECURITIES AND EXCHANGE COMMISSION, INVESTORS GROUP & GLOBAL GENERATIONS  
FROM: RECEIVER  
SUBJECT: SECURITIES AND EXCHANGE COMMISSION V. BIVONA, *ET AL.* - CRITERIA FOR DETERMINATION OF ALLOWABLE PROOFS OF CLAIM FILED AGAINST THE RECEIVERSHIP ESTATE'S ASSETS  
Case no: 3:16-CV-1386 (N.D. CAL.)  
DATE: FEBRUARY 15, 2018  
CC: JOHN COTTON, COUNSEL FOR THE RECEIVER

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Pursuant to the Court's Minute Order dated February 8, 2018 (the "Order"), the Receiver is expected to complete its initial review of the proofs of claim ("Claims") filed in approximately three weeks from the date of the Order.

The review process should include the validation and quantification of all the Claims timely filed against the Receivership Estate's assets ("Valid Claims"). In addition to validating and quantifying the Valid Claims, the Receiver is to report to the Court on whether a shortfall exists based on the Valid Claims. A shortfall will result if the amount and number of shares/units claimed by those who filed valid claims exceeds the amount and number of shares/units available to the Receiver's best knowledge and belief.

This memorandum outlines the steps and procedures the Receiver proposes to follow in order to determine the validity and amount of the Valid Claims, and to determine the amount of any shortfall.

### Procedures to be followed for each claim filed:

1. The attestation document (the document sent to the Claimants and returned with signature) will be reviewed for complete and proper execution
  - 1.1. Claims submitted by claimants who fully agree with the pre-populated form data (provided from the records of the Defendant Entities as identified in the October 11, 2016 Order appointing the receiver) will be considered valid based on the executed attestation.
  - 1.2. The validity of claims submitted by claimants without pre-populated claims data or that differs from pre-populated claims data will be determined by the availability and quality of supporting documentation provided by the Claimant.
2. If necessary, based on step 1.2, supporting documents enclosed with the claim will be individually reviewed

### Acceptable supporting documents shall consist of the following:

- 2.1. Executed contracts and agreements evidencing the details of the investment(s) in a specific Receivership Entity or multiple Receivership Entities (e.g. Subscription Agreements) and,

2.2. Cancelled/cleared bank checks (front and back of check) that match bank records showing that payment left the claimant's bank account and funds were deposited into the bank account of one of the Receivership Entities, in accordance with the Subscription Agreement

Where investments were made via wire transfer instead of a check, the claimant shall provide:

2.3. Cleared bank wires showing:

- the name of the claimant (payor) initiating the wire transfer
- the person/entity that the payment was made payable to (payee)
- the payee's account number
- the date the wire cleared the claimant's bank account per the claimant's bank records
- the amount of the payment reflecting the investment in a specific Receivership Entity in accordance with the Subscription Agreement
- the identification number assigned to the payee by the payor's bank, and,
- the trace number or identification number assigned to the electronic payment by the bank

**Note:** In lieu of cancelled bank checks, the Receiver will accept the claimant's redacted bank statement(s) reflecting the payee's identity and amount(s) invested in accordance with said Subscription Agreement

3. For claims filed by non-investors i.e former employees, contractors, trade creditors, lenders, tax authorities, acceptable supporting documents shall include copies of the following, as applicable:
  1. Executed promissory notes
  2. Account statements reflecting a history of payments already received and outstanding balances claimed on the proof of claim filed
  3. Outstanding invoices
  4. Contracts
  5. Executed security agreements
  6. Executed loan documents (including evidence of monies loaned via cleared bank wire or cancelled bank check)